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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

CODY ALLEN EASTERDAY,

Defendant.

Case No. 4:21-CR-06012-SAB

**UNITED STATES’ RESPONSE TO  
DEFENDANT’S MOTION FOR A  
SENTENCE REDUCTION UNDER  
18 U.S.C. § 3582(c)(2)**

Plaintiff, the United States of America, by and through Glenn S. Leon, Chief, Fraud Section, Criminal Division, United States Department of Justice, John (“Fritz”) Scanlon, Assistant Chief, Fraud Section, Criminal Division, United States Department of Justice, Vanessa R. Waldref, United States Attorney for the Eastern District of Washington, and Ian Garriques, Assistant United States Attorney for the Eastern District of Washington (collectively, “the United States”), hereby submits this response to Defendant’s Motion for a Sentence Reduction Under 18 U.S.C. § 3582(c)(2), (the “Motion”), ECF No. 107, and states as follows:

The United States opposes Easterday’s Motion because, even though the defendant is eligible for a two-point reduction in his offense level, a sentence at the low-end of the amended guideline range would be wholly insufficient, in light of the factors set forth in 18 U.S.C. § 3553(a)(2). As explained in the United States’ Sentencing

1 Memo and at the sentencing hearing, ECF Nos. 49 & 89, the sheer magnitude of  
2 Easterday's fraud is staggering. Indeed, this Court noted that "[i]t's the biggest theft or  
3 fraud that I've seen in my career as a judge, probably the biggest I will see. I hope so,  
4 anyway." ECF No. 89 at 52:20-22. Easterday stole nearly a quarter of a billion dollars  
5 over the four-year period from 2016 through November 2020. He did so by  
6 manufacturing scores of false and fraudulent invoices and other information that he used  
7 to conceal the fact that, instead of purchasing over 265,000 head of cattle, Easterday  
8 used the \$244 million his victims entrusted him with to cover huge losses Easterday had  
9 incurred in the commodities futures market and to shore up the finances of Easterday's  
10 company.

11 To be sure, Easterday has taken responsibility for his actions, helped raise money  
12 to pay his creditors, and has acquitted himself well in prison. But such conduct does  
13 not excuse the more than four years of dishonesty and sheer magnitude of his fraud, and  
14 it certainly does not warrant a reduction in his sentence of more than 25%. Rather, the  
15 maximum amount by which this Court should reduce Easterday's sentence is 11  
16 months, which would result in a sentence at the high end of the amended guideline range  
17 (and the low end of the original guideline range): 121 months. Such a sentence would  
18 be sufficient, but not greater than necessary, to provide just punishment in this case,  
19 promote respect for the law, and deter others from committing similar, massive crimes  
20 in the future.

21 **I. PROCEDURAL BACKGROUND**

22 On March 24, 2021, Easterday was charged by information with one count of  
23 wire fraud, in violation of Title 18, United States Code, Section 1343. ECF No. 1. On  
24 March 30, 2021, Easterday pleaded guilty to the single-count information. ECF No. 12.

25 On October 4, 2022, the Court sentenced Easterday to 132 months'  
26 imprisonment. In so doing, the Court first adopted the total offense level recommended  
27 by the U.S. Probation Office ("USPO") and by the parties' plea agreement: 32. Under  
28 the U.S. Sentencing Guidelines ("USSG") then in effect, Easterday's guideline range

1 was 121 to 151 months' imprisonment. The Court thus imposed a mid-range sentence  
2 after noting, among other things, the magnitude and brazenness of the fraud. *See* ECF  
3 No. 89 at 50-58.

4 On January 17, 2024, the USPO informed this Court that Easterday qualifies for  
5 a two-point reduction in his offense level pursuant to USSG § 4C1.1(a) and Amendment  
6 821. Under this revised offense level, Easterday's guideline range is 97 to 121 months'  
7 imprisonment. ECF No. 105.

8 On January 31, 2024, Easterday filed his Motion, which requests that the Court  
9 reduce Easterday's sentence by approximately 26.5%—from 132 months in prison to  
10 just 97. ECF No. 107.

## 11 **II. FACTUAL BACKGROUND**

12 From 2016 through 2020, Easterday defrauded Tyson Foods, Inc. ("Tyson") of  
13 more than \$233 million, and he defrauded another company of over \$11 million more.  
14 ECF No. 10 at 5-9.

15 Easterday was the president and an owner of Easterday Ranches from at least  
16 1998 through December 2020. Under Cattle Feeding Agreements that Easterday  
17 entered into on behalf of his company, Easterday agreed that his ranch would buy cattle  
18 for Tyson and provide feeding space for the cattle until they were sent for slaughter at  
19 Tyson's plant located in Pasco, Washington. Easterday further agreed to provide Tyson  
20 supporting documentation regarding the purchase cost of the cattle that Easterday  
21 Ranches proposed buying on behalf of Tyson. Upon approval by Tyson, Easterday  
22 Ranches would purchase the cattle, and Tyson agreed to reimburse Easterday Ranches  
23 for the purchase costs. *Id.*

24 Also under the Cattle Feeding Agreements, Tyson agreed to reimburse Easterday  
25 Ranches for the costs associated with growing the purchased cattle until they were ready  
26 to be slaughtered. Easterday Ranches agreed to seek such reimbursement by billing  
27 Tyson twice monthly. Easterday, on behalf of Easterday Ranches, specifically agreed  
28 that the bills would accurately reflect the costs associated with growing the cattle. *Id.*

1 In addition to the Cattle Feeding Agreements between Easterday Ranches and  
2 Tyson, Easterday also entered into a series of livestock bills of sale with Company 1.  
3 As with the Cattle Feeding Agreements, Easterday personally signed each of the  
4 livestock bills of sale on behalf of Easterday Ranches. Through these bills of sale,  
5 Easterday Ranches agreed to raise cattle on behalf of Company 1 until the cattle were  
6 slaughter-ready, using purchase funds and prepaid feed costs advanced by Company 1.  
7 Easterday Ranches further agreed that, when the cattle ultimately were sold for  
8 slaughter, Easterday Ranches would repay the advanced funds to Company 1, plus 4%  
9 interest. *Id.*

10 Beginning in or around 2016 and continuing through November 2020, Easterday  
11 submitted and caused others to submit to Tyson scores of false and fraudulent invoices  
12 and other information that sought and obtained reimbursement from Tyson for the cost  
13 of purchasing and feeding cattle that did not actually exist. As just one example, on or  
14 about May 7, 2020, Easterday caused an employee of Easterday Ranches to email an  
15 employee of Tyson, among other things, two false and fraudulent invoices from  
16 Easterday Ranches to Tyson. The invoices sought payment for eight lots of cattle that  
17 Easterday Ranches purportedly purchased on behalf of Tyson. In truth and fact, none  
18 of the eight lots of cattle listed on the invoice was ever actually purchased by or  
19 delivered to Easterday or Easterday Ranches. The eight phantom lots totaled 6,312 head  
20 of cattle. As a result, in just this one example, Easterday defrauded Tyson of  
21 approximately \$5,314,326.11 by causing it to pay Easterday Ranches for cattle that  
22 simply did not exist. *Id.*

23 Easterday also submitted and caused to be submitted to Tyson false and  
24 fraudulent Cattle Inventory Reports that purported to describe the numerous lots of  
25 cattle that Easterday, through Easterday Ranches, purportedly purchased on behalf of  
26 Tyson. For example, on or around November 10, 2020, Easterday caused an employee  
27 of Easterday Ranches to send Tyson a Cattle Inventory Report that listed the total  
28 headcount of “Tyson” cattle as approximately 296,535. Of that number, approximately

1 263,780 (89%) were identified as having a “Loc” (location) of 99, which was  
2 Easterday’s secret, internal designation in Easterday Ranches’ books and records for  
3 cattle that—unbeknownst to Tyson—had never actually been purchased by or delivered  
4 to Easterday or Easterday Ranches (i.e., the ghost cattle). *Id.*

5 As a result of Easterday’s four-year scheme to defraud, Tyson paid Easterday  
6 Ranches a total of approximately \$233,008,042 for purchasing and feeding 265,995  
7 ghost cattle. *Id.*

8 In addition, beginning in or around March 2020, and continuing through in or  
9 around September 2020, Easterday submitted and caused others to submit to Company  
10 1 false and fraudulent bills of sale and invoices that sought payment from Company 1  
11 for the purported cost of purchasing and feeding cattle that were never actually  
12 purchased by or delivered to Easterday or Easterday Ranches, and that also did not  
13 actually exist (i.e., more ghost cattle). *Id.*

14 In total, as a result of the false and fraudulent representations that Easterday made  
15 and caused others to make, Company 1 paid Easterday Ranches approximately  
16 \$11,023,090 for the purported costs of purchasing and raising thousands of these ghost  
17 cattle. *Id.*

18 Instead of using the vast sums of money he received from Tyson and Company  
19 1 to purchase and feed cattle, Easterday used a significant portion of the proceeds of his  
20 fraud to cover approximately \$200 million in commodity futures contracts trading  
21 losses that Easterday incurred on behalf of Easterday Ranches from in or around 2011  
22 through in or around 2020. *Id.* The remaining \$44 million went into the accounts of  
23 Easterday Ranches. ECF No. 89 at 8:16-9:5.

### 24 **III. LEGAL STANDARD**

25 In Part B, Subpart 1 to Amendment 821 to the Sentencing Guidelines, the  
26 Sentencing Commission added what now appears in Section 4A1.1(c), providing a 2-  
27 offense-level reduction for many offenders who present zero criminal history points.  
28

1 On August 24, 2023, the Commission decreed that this change applies retroactively.  
2 *See* § 1B1.10(e)(2) (Nov. 1, 2023).

3 In *Dillon v. United States*, 560 U.S. 817 (2010), the Supreme Court addressed the  
4 process for application of a retroactive guideline amendment, emphasizing that Section  
5 1B1.10 is binding. The Court declared: “Any reduction must be consistent with  
6 applicable policy statements issued by the Sentencing Commission.” *Id.* at 821. The  
7 Court required district courts to follow a two-step approach:

8 At step one, § 3582(c)(2) requires the court to follow the  
9 Commission’s instructions in §1B1.10 to determine the  
10 prisoner’s eligibility for a sentence modification and the extent  
11 of the reduction authorized. Specifically, §1B1.10(b)(1) requires  
12 the court to begin by “determin[ing] the amended guideline range  
13 that would have been applicable to the defendant” had the  
14 relevant amendment been in effect at the time of the initial  
15 sentencing . . . . Consistent with the limited nature of § 3582(c)(2)  
16 proceedings, §1B1.10(b)(2) also confines the extent of the  
17 reduction authorized. Courts generally may “not reduce the  
18 defendant’s term of imprisonment under 18 U.S.C. § 3582(c)(2)  
19 . . . to a term that is less than the minimum of the amended  
20 guideline range” produced by the substitution. §1B1.10(b)(2)(A)  
21 . . . .

22 At step two of the inquiry, § 3582(c)(2) instructs a court to  
23 consider any applicable § 3553(a) factors and determine  
24 whether, in its discretion, the reduction authorized by reference  
25 to the policies relevant at step one is warranted in whole or in  
26 part under the particular circumstances of the case.

27 *Dillon*, 560 U.S. at 827.  
28

1 Subject to the limits set forth in Section 1B1.10(b), the Court may consider all  
2 pertinent information in applying the Section 3553(a) factors and determining whether  
3 and by how much to reduce the defendant's sentence. Thus, "[t]he grant of authority to  
4 the district court to reduce a term of imprisonment is unambiguously discretionary,"  
5 even when the guideline range is actually reduced. *United States v. Vautier*, 144 F.3d  
6 756, 760 (11th Cir. 1998). A district court has "substantial discretion" in deciding  
7 whether to reduce a sentence; even "[a]n agreement between the government and the  
8 defendant that a sentence reduction is appropriate does not bind the judge; nor is the  
9 judge's consideration of the question limited to the factors the parties regard as  
10 relevant." *United States v. Young*, 555 F.3d 611, 614 (7th Cir. 2009).

11 Accordingly, many courts have denied sentence reductions in situations where  
12 guideline amendments lowered the sentencing ranges. *See, e.g., United States v.*  
13 *Wilson*, 716 F.3d 50, 53 (2d Cir. 2013) (denial of sentence reduction was not an abuse  
14 of discretion, though earlier sentence reduction had been granted despite defendant's  
15 prison misconduct, and defendant had not engaged in any new prison misconduct);  
16 *United States v. Styer*, 573 F.3d 151, 154-55 (3d Cir. 2009) (denial based on nature of  
17 original criminal conduct); *United States v. Melton*, 2008 WL 1787045 (W.D.N.C.  
18 2008) (denial based on nature of offense); *United States v. Craig*, 2008 WL 1775263  
19 (W.D.N.C. 2008) (denial based on the facts of the case); *United States v. Suell*, 2008  
20 WL 2845295 (N.D. Tex. 2008) (motion denied because defendant benefitted from a  
21 favorable plea agreement in which charges were dismissed and the sentence was  
22 reduced); *United States v. Sifford*, 2008 WL 2048387 (W.D.N.C. 2008) (in exercise of  
23 the court's discretion, it affords only a partial reduction, in light of the defendant's  
24 record), *aff'd*, 309 F. App'x 705 (4th Cir. 2009). *See also United States v. Marion*, 293  
25 F. App'x 731 (11th Cir. 2008) (district court's consideration of the defendant's criminal  
26 history was proper, when denying a reduction motion, even though this was the same  
27 factor it considered at his original sentencing hearing).



#### 1 **IV. ARGUMENT**

2 As noted above, the United States agrees at step one that Easterday is eligible for  
3 relief under the amendment. Turning to step two, however, the United States disagrees  
4 that the section 3553(a) factors weigh in favor of reducing Easterday's sentence by  
5 26.5%, all the way from 132 months to just 97 months in prison. To the contrary, the  
6 section 3553(a) factors weigh heavily in favor of a sentence at the top end of the  
7 amended guideline range of 97 to 121 months' imprisonment. Such a sentence would  
8 be "sufficient, but not greater than necessary" to comply with the purposes enumerated  
9 in 18 U.S.C. § 3553(a)(2), discussed further below.

##### 10 1. *Nature and Circumstances of the Offense*

11 Easterday committed a massive, brazen, long-term fraud that resulted in him  
12 successfully stealing nearly a quarter of a billion dollars. The magnitude of Easterday's  
13 fraud is so large it is difficult to comprehend. Indeed, this Court noted that "[i]t's the  
14 biggest theft or fraud that I've seen in my career as a judge, probably the biggest I will  
15 see. I hope so, anyway." ECF No. 89 at 52:20-22. In dollar terms, the amount that  
16 Easterday stole would have covered Yakima's combined police, courts, and fire budget  
17 – enough to protect a city of nearly 100,000 people – for more than four years.<sup>1</sup> In terms  
18 of head of cattle, Easterday's fraud created a mega ghost herd that was more than 2.5  
19 times the population of Yakima: a total of approximately 265,995 ghost cattle.

20 In addition to its sheer size, the fraud perpetrated by Easterday was extremely  
21 long-running and brazen. It was the product of a series of decisions made over the  
22 course of more than four years, and it was within his power to stop at any point in time.  
23 Instead, Easterday continued to lie to his victims over and over again, submitting false  
24 and fraudulent invoices, stealing tens and eventually hundreds of millions of dollars

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26 <sup>1</sup> See City of Yakima 2020 Adopted Budget at 16, 18, *available at*

27 <https://www.yakimawa.gov/services/finance/files/2020-Adopted-Budget.pdf>



1 from those who made the mistake of putting their trust in him—all to cover up his  
2 reckless and mounting losses trading commodities futures contracts.

3 Moreover, as explained by the United States at the sentencing hearing, Easterday  
4 stole far more than he lost in the commodities futures markets. His losses totaled  
5 approximately \$200 million, but he defrauded his victims of over \$244 million. *See*  
6 ECF No. 10 at 8-9. The remaining \$44 million went into the accounts of Easterday  
7 Ranches to shore up its finances and prolong Easterday's status as an elite businessman  
8 in the community. ECF No. 89 at 8:16-9:5. Easterday could have come clean at any  
9 point, but he did not. He instead committed fraud on a massive scale.

10 The United States respectfully submits that the brazen, extensive, and persistent  
11 nature of Easterday's crimes warrants a sentence at least at the high end of the amended  
12 guideline range of 97 to 121 months.

## 13 2. *History and Characteristics of the Defendant*

14 Prior to his incarceration, Easterday enjoyed a life of extreme privilege. His  
15 family owned Easterday Farms, a large farming company in southeast Washington  
16 State, and they also owned Easterday Ranches, a large cattle feeding operation. In short,  
17 Easterday had every opportunity to succeed in life through legitimate work, and he took  
18 advantage of those opportunities.

19 However, when Easterday began experiencing losses trading commodity futures  
20 contracts, he did not cover them through legitimate or legal means. He did not admit  
21 his mistakes. Instead, Easterday covered up those losses by stealing from the very  
22 people who trusted him as a business partner. For years, Easterday lied repeatedly and  
23 stole more and more money to cover his ever-growing losses. He turned to serious  
24 crime, rather than face the consequences of his mistakes in the commodities market. As  
25 discussed above, Easterday could have ended his scheme at any time, but he chose not  
26 to do so. Only once Tyson began asking questions about the cattle he had promised to,  
27 but did not, purchase did Easterday come clean. *See* ECF No. 26 (Presentence  
28 Investigative Report ("PSR") at 7 n.2.

1                   3.     *Seriousness of the Offense; Promote Respect for the Law; Provide*  
 2                             *Just Punishment*

3             A sentence at the high end of the amended guideline range (the low end of the  
 4 original guideline range) reflects the seriousness of the offense, promotes respect for  
 5 the law, and provides a just sentence. Easterday committed a very serious crime—one  
 6 that involved unabashed fabrications, continued over several years, and eventually  
 7 culminated in the theft of nearly a quarter of a billion dollars. It necessitates stiff  
 8 punishment.

9             Indeed, a sentence at the high end of the applicable guideline range would show  
 10 the public that a well-heeled defendant who steals nearly a quarter billion dollars  
 11 through fraud does not receive a more lenient sentence than a defendant who, for  
 12 instance, distributes 280 grams of crack cocaine. *See* 21 U.S.C. § 841 (imposing a ten-  
 13 year mandatory minimum).

14                   4.     *Need to Deter Future Criminal Conduct*

15             Under Section 3553(a), the need for the sentence to “afford adequate deterrence  
 16 to criminal conduct,” 18 U.S.C. § 3553(a)(2)(B), must also be considered. Here, the  
 17 United States respectfully submits that a sentence at the top end of the amended  
 18 guideline range of 97 to 121 months is necessary to serve this purpose. The enormity  
 19 and audacity of Easterday’s crimes has understandably captured the attention of both  
 20 the public, generally, and members of the cattle and farming industries specifically. The  
 21 deterrent message and effect of a high-end guideline sentence will resonate significantly  
 22 with any individual tempted to engage in large-scale white-collar crime like Easterday.

23             A sentence of 121 months is appropriate for the further reason that white-collar  
 24 crime can be seriously affected by the imposition of significant sentences. As the  
 25 United States Court of Appeals for the 11th Circuit has observed, “[d]efendants in white  
 26 collar [cases] often calculate the financial gain and risk of loss, and white collar crime  
 27 therefore can be affected and reduced with serious punishment.” *United States v.*  
 28 *Martin*, 455 F.3d 1227, 1240 (11th Cir. 2006). Thus, it is this type of mentality that is

1 most amenable to deterrence. *See, e.g., Martin*, 455 F.3d at 1240 (“Because economic  
 2 and fraud-based crimes are more rational, cool, and calculated than sudden crimes of  
 3 passion or opportunity, these crime are prime candidates for general deterrence.”  
 4 (internal quotation marks and alteration omitted)); *United States v. Hauptman*, 111 F.3d  
 5 48, 52 (7th Cir. 1997) (“[White collar] crime is not as feared as violent crime or drug  
 6 offenses, but like the latter it requires heavy sentences to deter because it is potentially  
 7 very lucrative.”).

#### 8 5. *Need to Avoid Unwarranted Disparities*

9 Under 18 U.S.C. § 3553(a)(7), the Court should consider the “need to avoid  
 10 unwarranted sentencing disparities.” The Sentencing Guidelines have taken into  
 11 account the relevant factors and are in and of themselves a means to avoid unwarranted  
 12 sentencing disparities. A sentence of 121 months in prison not only falls within the  
 13 amended guideline range, but it falls in the right place given the magnitude of fraud: at  
 14 the high end.

15 Such a sentence would be consistent with the findings of the court in *United*  
 16 *States v. Parris*, which ordered the parties to compile sentences for large-scale fraud  
 17 cases, and even conducted research of its own:

18 It was perfectly clear that there was a correlation between the  
 19 losses in those cases and the periods of incarceration: Those who  
 20 were not cooperators and were responsible for enormous losses  
 21 were sentenced to double-digit terms of imprisonment (in years);  
 22 those whose losses were less than \$100 million were generally  
 23 sentenced to single-digit terms.

24 *United States v. Parris*, 573 F. Supp. 2d 744, 753 (E.D.N.Y. 2008).

25 The United States therefore submits that a sentence of 121 months is appropriate  
 26 and would not result in an unwarranted disparity.

1 **V. CONCLUSION**

2 For the foregoing reasons, the United States respectfully submits that the Court  
 3 should deny Easterday's motion for a sentence reduction insofar as it seeks a reduction  
 4 to 97 months' imprisonment. Rather, the largest reduction the Court should entertain is  
 5 to 121 months' imprisonment, which is the high end of the amended guideline range.  
 6 Such a sentence is sufficient, but not greater than necessary, to provide just punishment  
 7 to Easterday for his crime, promote respect for the law, and deter the defendant and  
 8 others from committing similar crimes in the future. *See* 18 U.S.C. § 3553(a).

9  
 10 Respectfully submitted this 7th day of February 2024.

11 GLENN S. LEON  
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 13 CRIMINAL DIVISION  
 14 U.S. DEPARTMENT OF JUSTICE

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**CERTIFICATE OF SERVICE**

I hereby certify that on the date indicated herein, I caused a true and correct copy of the foregoing to be filed with the Clerk of Court using the CM/ECF System, which will send notification of such to all attorneys of record.

John ("Fritz") Scanlon  
John ("Fritz") Scanlon  
Assistant Chief, Fraud Section  
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